

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>ALEXUS MURPHY, MARKITTA WITCHER, and DIANE HAINES, individually and on behalf of all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>ACTIVE INTEREST MEDIA, INC., Defendant.</p>	<p>Case No. 22-cv-12159</p> <p>Hon. David M. Lawson Mag. Anthony P. Patti</p>
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PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs, individually and on behalf of all others similarly situated, submit this notice of supplemental authority to apprise the Court of a recent decision relevant to the issues raised in Plaintiffs' response in opposition (ECF No. 26) to Defendant's motion to dismiss (ECF No. 24):

1. On May 19, 2023, the Honorable Bernard A. Friedman issued a decision denying the defendant's motion to dismiss in *Nock v. Boardroom, Inc. d/b/a Bottom Line, Inc.*, Case No. 2:22-cv-11296-BAF-EAS, ECF No. 27 (E.D. Mich. May 19, 2023), a PPPA action similar to the instant matter. A copy of the *Nock* decision is attached hereto as Exhibit A.

2. In *Nock*, the court held that "Article III standing poses no obstacle to [Plaintiff's] PPPA claim" in light of the Sixth Circuit's controlling decision in *Coulter-Owens v. Time Inc.*, 695 F. App'x 117 (6th Cir. 2017) and the "district courts in this circuit [that] have consistently followed *Coulter-Owens*["] *See Nock*, at 7 (collecting cases).

3. The court in *Nock* also held that the six-year limitation period found in M.C.L. § 600.5813 applied to plaintiff's PPPA claim. *See id.*, at 8 (noting that "countless opinions" from Michigan's federal courts have "yielded the same outcome – that the PPPA's limitation period is six years").

4. Finally, the court found that the complaint's allegations – which are less detailed than the allegations of the operative complaint in this case – "are more than

adequate to show that [the defendant] plausibly violated the PPPA[.]” *Id.*, at 9. The court rejected the defendant’s argument, also made by Defendant in this case, that “the screenshot of NextMark’s website is not particularized enough to support [plaintiff]’s allegations,” finding that “[t]his argument misconceives how pleadings are evaluated on a Rule 12(b)(6).” *Id.*, at 10 (explaining that “no ‘evidentiary support’ – whether ‘in an affidavit or any other form’ – is necessary ‘for a claim to be plausible’”) (quoting *Gallivan v. United States*, 943 F.3d 291, 293 (6th Cir. 2019)). Thus, the court found the decision in *Nashel v. N.Y Times Co.*, No. 22-10633, 2022 U.S. Dist. LEXIS 185552 (E.D. Mich. Oct. 11, 2022) – which Defendant relies heavily upon in its motion to dismiss here – “unpersuasive” for the same reason. *See id.*, at 11 (citing *Gaines v. Nat’l Wildlife Fed’n*, No. 22-11173, 2023 U.S. Dist. LEXIS 75317, at *20-23 (E.D. Mich. May 1, 2023)). Accordingly, the court denied the defendant’s motion to dismiss in its entirety. *See id.* (“Because [plaintiff] states a plausible claim for relief under the PPPA – even without the embedded NextMark screenshot – her allegations are alone sufficient to withstand Rule 12(b)(6) scrutiny.”).

Dated: May 22, 2023

Respectfully submitted,

/s/ E. Powell Miller
 E. Powell Miller (P39487)
 THE MILLER LAW FIRM, P.C.
 950 W. University Drive, Suite 300
 Rochester, MI 48307
 Tel: 248-841-2200

epm@millerlawpc.com

Joseph I. Marchese
Philip L. Fraietta (P85228)
BURSOR & FISHER, P.A.
888 Seventh Avenue
New York, New York 10019
Tel: 646.837.7150
Fax: 212.989.9163
jmarshese@bursor.com
pfraietta@bursor.com

Frank S. Hedin
David W. Hall
HEDIN HALL LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131
Tel: 305.357.2107
Fax: 305.200.8801
fhedin@hedinhall.com
dhall@hedinhall.com

Counsel for Plaintiffs and the Putative Class

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2023, I electronically filed the foregoing documents using the Court's electronic filing system, which will notify all counsel of record authorized to receive such filings.

/s/ E. Powell Miller

E. Powell Miller (P39487)

THE MILLER LAW FIRM, P.C.

950 W. University Dr., Ste. 300

Rochester, MI 48307

Tel: (248) 841-2200

epm@millerlawpc.com